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Lynelle J. Slivinski (LS 1210)  
**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**  
521 Fifth Avenue, Suite 1700  
New York, New York 10175  
(212) 292-4314  
[lynelle.slivinski@ogletreedeakins.com](mailto:lynelle.slivinski@ogletreedeakins.com)

Attorneys for Defendant  
Sun Life Insurance & Annuity  
Company of New York

FILED  
U.S. DISTRICT COURT  
S.D. OF N.Y. MD.  
2008 APR 23 10 29 55

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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JACK B. LEMONIK,

Plaintiff,

v.

SUN LIFE INSURANCE & ANNUITY  
COMPANY OF NEW YORK,

Defendants.  
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Case No. 08 CIV. 0900 (JSR)

*Civil Action*

**NOTICE OF MOTION TO ADMIT  
MARK E. SCHMIDTKE, ESQ., *PRO*  
HAC VICE PURSUANT TO LOCAL  
RULE 1.3(c)**

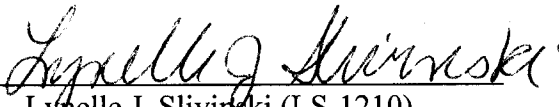
**To:** Brad A. Schlossberg, Esq.  
Quadrino Schwartz  
666 Old Country Road - Ninth Floor  
Garden City, New York 11530

**COUNSEL:**

**PLEASE TAKE NOTICE** that on a date to be scheduled by the United States District Court for the Southern District of New York, defendant Sun Life Insurance & Annuity Company of New York shall move for an Order admitting Mark E. Schmidtke, Esq., as a visiting attorney *pro hac vice* to participate in all proceedings relative to the above-captioned matter.

**PLEASE TAKE FURTHER NOTICE** that in support of this application, defendant shall rely upon the accompanying Affidavits of Mark E. Schmidtke, Esq., and Lynelle J. Slivinski, Esq. A proposed form of Order is being concurrently submitted.

Respectfully submitted,

By:   
Lynelle J. Slivinski (LS-1210)  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
521 Fifth Avenue, Suite 1700  
New York, New York 10017  
[lynelle.slivinski@ogletreedeakins.com](mailto:lynelle.slivinski@ogletreedeakins.com)  
(212) 292-4314

Dated: April 21, 2008

MARK E. SCHMIDTKE  
**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**  
Two First National Plaza, 25<sup>th</sup> Floor  
20 South Clark Street  
Chicago, Illinois 60603

Attorneys for Defendants  
Sun Life Insurance & Annuity  
Company of New York

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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JACK B. LEMONICK,

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COMPANY OF NEW YORK,

Defendants.  
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Case No. 08 CIV. 0900 (JSR)

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*Civil Action*

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**AFFIDAVIT OF MARK E. SCHMIDTKE,  
ESQ., IN SUPPORT OF MOTION FOR  
ADMISSION *PRO HAC VICE***

**MARK E. SCHMIDTKE, ESQ.,** being of full age, avers and states as follows:

1. I am a shareholder in the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I submit this Affidavit in support of my application for permission to appear *pro hac vice* on behalf of Defendant Sun Life Insurance & Annuity Company of New York in the above-captioned matter.

2. I represent Defendant in the above-captioned matter along with Lynelle J. Slivinski, of counsel with the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. and a member in good standing of the bar of this Court.

3. This is a claim for benefits pursuant to the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") 29 U.S.C. §1001, *et. seq.* Due to the intricacies of ERISA and my focus on ERISA litigation, Defendant asked that I defend this case with Ms. Slivinski. I have served as counsel for Defendant in numerous other ERISA cases throughout the United States.

4. I received my law degree from Valparaiso University in 1981.

5. I am a member in good standing of the bar of the State of Indiana, and am admitted to practice before all levels of the Indiana state courts. *See* Exhibit A.

6. I am also admitted to and a member in good standing of the United States Supreme Court, the United States Court of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits, United States District Courts for the Northern and Southern Districts of Indiana, the Northern, Central and Southern Districts of Illinois, the District of Colorado, the Eastern District of Wisconsin, and the Eastern District of Michigan.

7. I am not under suspension, disbarment, or any other discipline or disciplinary procedure of any Court.

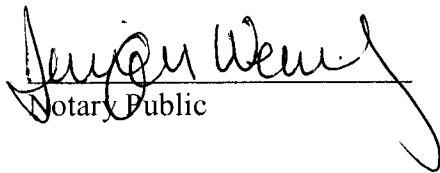
8. If admitted *pro hac vice*, I will conduct myself as an attorney of this Court uprightly and according to the law, and I will support and defend the Constitution of the United States.

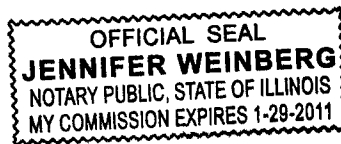
9. Accordingly, for the foregoing reasons, I respectfully request to be admitted as a visiting attorney *pro hac vice* to participate in all proceedings relative to the above-captioned matter.

I hereby aver that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

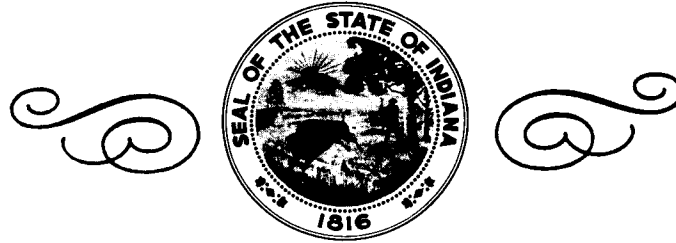
  
Mark E. Schmidtke

Sworn to and subscribed  
before me this 11 day  
of April 2008

  
Notary Public



# SUPREME COURT OF THE STATE OF INDIANA



## *Certification*

STATE OF INDIANA, SS:

I, Kevin S. Smith, Clerk of the Supreme Court  
of Indiana, do hereby certify that

MARK EUGENE SCHMIDTKE

is a member of the bar of said Court since admission on  
MAY 29th 1981, and is in good  
standing therein.

GIVEN under my hand and the seal of said Court at Indianapolis,  
Indiana, this 25th day of MARCH, 20 08.

A handwritten signature in cursive script, appearing to read "Kevin S. Smith", is written over a horizontal line.

KEVIN S. SMITH  
CLERK, SUPREME COURT OF INDIANA

Lynelle J. Slivinski (LS 1210)  
**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**  
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New York, New York 10175  
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Attorneys for Defendant  
Sun Life Insurance & Annuity  
Company of New York

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FOR THE SOUTHERN DISTRICT OF NEW YORK**

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JACK B. LEMONIK,

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COMPANY OF NEW YORK,

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Case No. 08 CIV. 0900 (JSR)

*Civil Action*

**AFFIDAVIT OF LYNELLE J.  
SLIVINSKI, ESQ., IN SUPPORT  
OF MOTION TO ADMIT MARK E.  
SCHMIDTKE, ESQ., *PRO HAC VICE***

**LYNELLE J. SLIVINSKI, ESQ.**, being of full age, avers and states as follows:

1. I am an attorney-at-law and Of Counsel of the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., attorneys for defendant Sun Life Insurance & Annuity Company of New York.

2. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of defendant's motion to admit Mark E. Schmidtke, Esq., as counsel *pro hac vice* pursuant to Local Rule 1.3(c).

3. I have been a member in good standing of the bar of the State of New York since 2000. I was also admitted to the bar of the United States District Court for the Southern District of New York in 2000, and am in good standing with this Court as well.

4. I have known Mark E. Schmidtke since November 2007.

5. Mr. Schmidtke is a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

6. I have found Mr. Schmidtke to be a skilled attorney and person of integrity. He is experienced in employee benefits/ERISA litigation, federal practice, and is familiar with the Federal Rules of Civil Procedure.

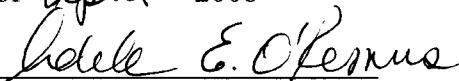
7. Accordingly, I am pleased to move the admission of Mark E. Schmidtke, Esq., *pro hac vice*.

8. I respectfully submit a proposed order granting the admission of Mark E. Schmidtke, Esq., *pro hac vice*, which is simultaneously filed herewith.

I hereby aver that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Lynelle J. Slivinski

Sworn to and subscribed  
Before me this 21<sup>st</sup> day  
of April 2008

  
Adele E. O'Remus  
Notary Public  
Notary Public of New Jersey  
My Commission Expires March 31, 2010



Lynelle J. Slivinski (LS 1210)  
**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**  
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New York, New York 10175  
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[lynelle.slivinski@ogletreedeakins.com](mailto:lynelle.slivinski@ogletreedeakins.com)

Attorneys for Defendant  
Sun Life Insurance & Annuity  
Company of New York

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Case No. 08 CIV. 0900 (JSR)

*Civil Action*

**ORDER ADMITTING MARK E.  
SCHMIDTKE, ESQ., *PRO HAC VICE*  
PURSUANT TO LOCAL RULE 1.3(c)**

**THIS MATTER**, having come before the Court upon the application of Defendant SUN LIFE INSURANCE & ANNUITY COMPANY OF NEW YORK for an Order pursuant to Local Rule 1.3(c);

**IT IS** on this \_\_\_\_\_ day of April 2008

**ORDERED** that Mark E. Schmidtke, Esq., in good standing, be admitted as a visiting attorney, *pro hac vice*, to participate in all proceedings relative to the above-captioned matter.

**SO ORDERED**

\_\_\_\_\_  
Honorable Jed S. Rakoff, U.S.D.J.

Lynelle J. Slivinski (LS-1210)  
**OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.**  
521 Fifth Avenue, Suite 1700  
New York, New York 10175  
Telephone: (212) 292-4314  
[lynelle.slivinski@ogletreedeakins.com](mailto:lynelle.slivinski@ogletreedeakins.com)

Attorneys for Defendant  
Sun Life Insurance & Annuity  
Company of New York

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**CERTIFICATE OF SERVICE**

**(Via First Class Mail)**

I am over the age of 18 and not a party to this action. On this date, I served a true copy of  
the following documents:

**NOTICE OF MOTION TO ADMIT MARK E. SCHMIDTKE, ESQ., *PRO HAC VICE* PURSUANT TO LOCAL RULE 1.3(c);**

**AFFIDAVIT OF MARK E. SCHMIDTKE, ESQ., IN SUPPORT OF MOTION TO ADMIT COUNSEL *PRO HAC VICE*;**

**AFFIDAVIT OF LYNELLE J. SLIVINSKI, ESQ., IN SUPPORT OF MOTION TO ADMIT MARK E. SCHMIDTKE, ESQ., *PRO HAC VICE*; and**

**[PROPOSED] ORDER ADMITTING MARK E. SCHMIDTKE, ESQ., *PRO HAC VICE* PURSUANT TO LOCAL RULE 1.3(c).**


on the party listed below, via first class mail, to the last known address of his attorneys of record as follows:

Brad A. Schlossberg, Esq.  
Quadrino Schwartz  
666 Old Country Road – Ninth Floor  
Garden City, New York 11530

Counsel for plaintiff  
Jack B. Lemonik

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 21, 2008

  
Margarida Oliveira

6218035.1 (OGLETREE)